

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

RICHARD MCNEAL HILLMAN,)	
)	
Petitioner,)	
)	
v.)	Nos. 2:14-CR-070-01
)	2:16-CV-236
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM OPINION

Before the Court is the motion to vacate, set aside, or correct sentence filed by Richard McNeal Hillman (“Petitioner”) pursuant to 28 U.S.C. § 2255 [Doc. 1].¹ The United States responded in opposition to the motion [doc. 2], and Petitioner replied in turn. [Doc. 3]. Additionally, the United States has filed a “Motion to Deny Petitioner’s § 2255 Motion as Meritless and to Dismiss It with Prejudice for Failing to State a Claim upon Which Relief May Be Granted.” [Doc. 4]. For the reasons below, Petitioner’s motion will be denied and dismissed with prejudice, and the United States’ motion will be denied as moot.

I. BACKGROUND

In December 2014, Petitioner pled guilty to conspiring to distribute and possess with the intent to distribute a-PVP (Counts One and Two), and to knowingly possessing a firearm as a previously convicted felon (Count 16). By judgment dated August 17, 2015, this Court sentenced the defendant to a below-guidelines net term of 188 months’ imprisonment. Petitioner did not file a direct appeal and, as a result, his judgment became final for purposes of § 2255(f)(1) on

¹ All docket references are to Case No. 2:16-CV-236 unless otherwise noted.

September 1, 2015. *See* Fed. R. App. P. 4(b)(1)(A). The United States Supreme Court decided *Johnson v. United States*—invalidating the residual clause of the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e)—on June 26, 2015. 135 S. Ct. 2551 (2015). Petitioner filed the instant petition less than one year from the date that his judgment became final.

II. STANDARD OF REVIEW

The relief authorized by 28 U.S.C. § 2255 “does not encompass all claimed errors in conviction and sentencing.” *United States v. Addonizio*, 442 U.S. 178, 185 (1979). Rather, a petitioner must demonstrate “(1) an error of constitutional magnitude; (2) a sentence imposed outside the statutory limits; or (3) an error of fact or law that was so fundamental as to render the entire proceeding invalid.” *Short v. United States*, 471 F.3d 686, 691 (6th Cir. 2006) (quoting *Mallett v. United States*, 334 F.3d 491, 496–97 (6th Cir. 2003)). Petitioners “must clear a significantly higher hurdle than would exist on direct appeal” and establish a “fundamental defect in the proceedings which necessarily results in a complete miscarriage of justice or an egregious error violative of due process.” *Fair v. United States*, 157 F.3d 427, 430 (6th Cir. 1998) (citations and quotation omitted).

III. ANALYSIS

Citing *Johnson*, Petitioner’s motion articulates a single broad ground for relief, arguing that *Johnson* in some way invalidates his sentence. The *specifics* of Petitioner’s claim are difficult to discern from the motion, as he makes reference to *Johnson*’s actual or then-arguable impact on: (1) the Armed Career Criminal Act, 18 U.S.C. § 924(e); (2) the Career Offender provisions of the United States Sentencing Guidelines (“U.S.S.G.”), U.S.S.G. §§ 4B1.1, 4B1.2; and (3) U.S.S.G. § 2K2.1, which addresses firearms offenses. In his reply brief, Petitioner attempts to clarify that his claim is that “the district court used Mr. Hillman [sic] prior conviction for a crime of violence or

controlled substance offense four-level enhancement because he possessed a firearm in connection with another offense. . . . Petitioner is actually innocent of the Guidelines range that he was enhanced by ‘his prior conviction for a crime of violence (controlled substance offense four-level enhancement) [’]” [Doc. 3, p 1-2].

Regardless of how it may be construed, Petitioner’s motion is without merit.

While Petitioner is correct that the *Johnson* decision indeed restricted what may be considered a “violent felony” under the Armed Career Criminal Act, the Petitioner in this case was not sentenced as an Armed Career Criminal. See PSR, 2:14-CR-070, doc. 211, p. 2 (stating that the statutory *maximum* for Count 16 was ten years, whereas if Petitioner was an Armed Career Criminal his statutory *minimum* would have been fifteen years). As for the sentencing guidelines cited by Petitioner, he was not deemed by this Court or his PSR to be a Career Offender, and the adjusted and total offense levels in this case were ultimately based on the a-PVP counts and not the felon in possession count. See *id.* ¶¶ 27-33, 41. Stated differently, Petitioner’s total offense level of 37 was not impacted in any way by any “prior conviction for a crime of violence.” Even if that were not so, the guidelines are not subject to *Johnson*-based vagueness challenges. See *Beckles v. United States*, 137 S. Ct. 886, 894 (2017).

IV. CONCLUSION

For the reasons discussed above, *Johnson* does not provide a basis for vacating, setting aside, or correcting Petitioner’s sentence. Petitioner’s § 2255 motion [Doc. 1] will be **DENIED** and **DISMISSED WITH PREJUDICE**. The Court will **CERTIFY** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, this Court will **DENY** Petitioner leave to proceed *in forma pauperis* on appeal. See Rule 24 of the Federal Rules of Appellate Procedure. Petitioner having failed to make a substantial showing of the denial of a

constitutional right, a certificate of appealability **SHALL NOT ISSUE.** 28 U.S.C. § 2253; Rule 22(b) of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

ENTER:

s/ Leon Jordan
United States District Judge